COURT OF APPEALS
DECISION
DATED AND RELEASED

APRIL 30, 1996

No. 96-0554

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN THE INTEREST OF BLADE C.,
A CHILD UNDER THE AGE OF 18:
STATE OF WISCONSIN,

Petitioner-Respondent,

v.

MARIO C.,

Respondent-Appellant.

APPEAL from a judgment and an order of the circuit court for Dunn County: JAMES A. WENDLAND, Judge. *Affirmed.*

LaROCQUE, J. Mario C. appeals a judgment and an order that involuntarily terminated his parental rights (TPR) to his son, Blade C. (d.o.b. 9/8/88). A jury found two grounds for the TPR based upon Mario's abandonment of Blade and Blade's continuing need for protection and services. *See* § 48.415, STATS.[1] In 1990, the circuit court imprecisely labeled an extension

[1] Section 48.415, STATS., provides in part:

> At the fact-finding hearing the court or jury may make a finding that grounds exist for the termination of parental rights. Grounds for termination of parental rights shall be one of the following:

of a dispositional order placing Blade outside Mario's home a "revision." Mario argues that this mistake made the extension ineffective, so the circuit court lost competency to proceed by failing to comply with the predispositional time limits of ch. 48. Alternatively, Mario argues that the failure of a 1989 dispositional order to warn him of any applicable grounds for TPR as required by § 48.356, STATS., precluded the termination.[2] This court concludes that Mario

(..continued)

(1) Abandonment. (a) Abandonment may be established by a showing that:

....

2. The child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356 (2) and the parent has failed to visit or communicate with the child for a period of 6 months or longer....

(2) Continuing need of protection or services. Continuing need of protection or services may be established by a showing of all of the following:

(a) That the child has been adjudged to be in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363 or 48.365 containing the notice required by s. 48.356 (2).

(b) That the agency responsible for the care of the child and the family has made a diligent effort to provide the services ordered by the court.

(c) That the child has been outside the home for a cumulative total period of one year or longer pursuant to such orders or, if the child had not attained the age of 3 years at the time of the initial order placing the child outside of the home, that the child has been outside the home for a cumulative total period of 6 months or longer pursuant to such orders; and that the parent has failed to demonstrate substantial progress toward meeting the conditions established for the return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the 12-month period following the fact-finding hearing under s. 48.424.

[2] Section 48.356, STATS., 1989-90, provided:

(1) Whenever the judge orders a child to be placed outside his or her home because the child has been adjudged to be in need of protection or services under s. 48.345, 48.357, 48.363 or 48.365, the judge shall orally inform the parent or parents who appear in court of any grounds for termination of parental rights under s. 48.415 which may be applicable and of the conditions necessary for the child to be returned to the home.

(2) In addition to the notice required under sub. (1), any written order which places a child outside the home under sub. (1) shall notify the parent or parents of the information specified under sub. (1).

waived his objection to the circuit court's competency to proceed by failing to timely object. This court rejects Mario's alternate argument because termination on grounds of abandonment only requires that a parent is warned on one occasion.

The facts are undisputed. A Dunn County Circuit Court found Blade to be a child in need of protection or services in 1989. At a dispositional hearing, the court transferred Blade's legal custody to the Dunn County Department of Human Services with physical placement in a foster home and imposed various conditions on Mario and the biological mother for Blade's return. The dispositional order had a March 27, 1990, expiration date and did not have any TPR warnings attached to it.

On March 26, 1990, Dunn County filed a petition for an extension of the dispositional order. The circuit court ordered a thirty-day extension pursuant to § 48.365(6), STATS., 1989-90. Mario does not contest the validity of the thirty-day extension. Within the thirty-day period, on April 24, 1990, the circuit court ordered the original disposition to extend the date of the disposition by one year but labeled the order a revision order. This document warned Mario that his parental rights may be terminated.

Blade has remained in Dunn County's legal custody since 1990 and in the same foster home. The trial court properly extended the dispositional order every year after 1990 and properly included TPR warnings in each extension.

The Dunn County Department of Human Services petitioned for the involuntary termination of Mario's parental rights. Mario moved for summary judgment on grounds that the original dispositional order did not contain a written warning and moved to dismiss the action on grounds that the circuit court lacked jurisdiction because it failed to properly extend the dispositional order in 1990. The circuit court denied these motions.

After a four-day trial, a jury returned special verdicts finding Mario abandoned Blade and that Blade was in continuing need of protection and services. At a dispositional hearing pursuant to § 48.427, STATS., the circuit court terminated Mario's parental rights.

I

Mario argues that the circuit court lost its competency to proceed[3] in April 1990 because it failed to properly extend the original dispositional order dated March 27, 1989, beyond one year and thirty days.[4] The court extended the original dispositional order by a document entitled "ORDER FOR REVISION OF DISPOSITIONAL ORDER." Pursuant to § 48.363, STATS., 1989-90, a revision may not extend the effective period of the original order.

This court concludes that Mario is precluded from challenging the competency of the circuit court to proceed. In ***In re L.M.C.***, 146 Wis.2d 377, 432 N.W.2d 588 (Ct. App. 1988), a circuit court temporarily extended a dispositional order in a CHIPS hearing for more than thirty days without a hearing, which violated § 48.365(6), STATS. The parties did not immediately object to this invalid temporary extension and did not object at a later hearing in which the circuit court extended the dispositional order for a year. ***L.M.C.***, 146 Wis.2d at 383-84, 432 N.W.2d at 591. However the child's parents objected to the court's competency to proceed at a later hearing to extend the dispositional order for an additional year. ***Id.*** at 395, 432 N.W.2d at 596. We concluded that the parents were precluded from raising the issue because the parties had ample opportunity to litigate and appeal the issue at the time of the earlier extension hearing. ***Id.*** at 395-96, 432 N.W.2d at 596-97. ***L.M.C.*** controls this case. Mario had ample opportunity to object to the circuit court's competency to proceed at the 1991 extension hearing.[5]

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[3] Mario actually argues that the circuit court lost "jurisdiction." A circuit court loses "competency to proceed," not "subject matter jurisdiction," when it fails to meet ch. 48, STATS., predispositional time limits. ***In re B.J.N.***, 162 Wis.2d 635, 654 n.15, 469 N.W.2d 845, 852 n.15 (1991).

[4] A petition for TPR cannot be brought for the time period between the original disposition order and the 1990 revision under either §§ 48.415(1) or 48.415(2), STATS., because the original dispositional order did not contain the notice required by § 48.356(2), STATS.

[5] In ***In re B.J.N***., 162 Wis.2d 635, 469 N.W.2d 845 (1991), our supreme court held that a party cannot waive the right to object to a circuit court's loss of competence if the party objects before he or she has received a full and fair hearing from the court. ***Id***. at 658, 469 N.W.2d at 854. The

Mario does not dispute that the circuit court issued new extension orders with full and fair hearings after it allegedly lost its competency to proceed. Mario now attacks these orders as void. This court concludes that ***L.M.C.*** dictates that Mario waived his objection to the circuit court's competency to proceed.

Were this court to address the matter on the merits, it is noted that § 48.365, STATS., 1989-90, was not aimed at the title of the order. Apart from the title, the hearing preceding the order complied with § 48.365 in every respect. The purpose of § 48.365 is to guarantee a review of dispositional orders with full due process protections at least every year and thirty days. *See* ***In re S.D.R.***, 109 Wis.2d 567, 574-76, 326 N.W.2d 762, 766 (1982). Mario does not allege that he was prejudiced in any way by the title of the order.

II

Next, Mario argues that the termination petition was invalid because the 1989 dispositional order that originally transferred legal custody of Blade to Dunn County failed to provide the warnings provided by § 48.356, STATS., 1989-90. Mario relies on ***In re D.F.***, 147 Wis.2d 486, 433 N.W.2d 609 (Ct. App. 1988), and ***In re K.K.***, 162 Wis.2d 431, 469 N.W.2d 881 (Ct. App. 1991), for the proposition that "a continuing need for protection and services can be a basis for involuntary termination of parental rights only if the statutory warning required by sec. 48.356(2), Stats., is given *each* time an order places a child outside his or her home ...." ***K.K.***, 162 Wis.2d at 437-38, 469 N.W.2d at 884 (quoting ***D.F.***, 147 Wis.2d at 498-99, 433 N.W.2d at 613-14).[6]

(..continued)
supreme court distinguished ***In re L.M.C***., 146 Wis.2d 377, 432 N.W.2d 588 (Ct. App. 1988), on grounds that in ***L.M.C***. the parents received a full and fair hearing after the court's loss of competence, during which they failed to object. ***B.J.N***., 162 Wis.2d at 658, 469 N.W.2d at 854.

[6] Mario advances a substantively similar argument that the circuit court erred in modifying the jury instruction when it deleted the requirement that each order placing a child outside the home must have the statutory notice requirement.

The jury found that Mario abandoned Blade. In ***K.K.***, we held that when grounds for termination based on abandonment exist, the parent need only be warned once about the possibility of a TPR, not each time a dispositional order places the child outside his or her home. ***Id.*** at 438-39, 469 N.W.2d at 884. Mario does not dispute that all the dispositional orders except the first one contained the appropriate warning. This court concludes that grounds for termination existed because of abandonment and need not reach Mario's argument regarding whether the one-time failure to warn invalidated the grounds for termination based on Blade's continuing need for protection and services.

By the Court. – Judgment and order affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.